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No. 750

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

COMPLETE AUTO TRANSIT, INC.,
Appellant,

v.

CHARLES F. CARPENTIER, Secretary of State of Illinois,
Appellee.

On Appeal from the Supreme Court of Illinois, En Banc.

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CHARLES F. CARPENTIER, Secretary of State of Illinois,
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On Appeal from the Supreme Court of Illinois, En Banc.

JURISDICTIONAL STATEMENT.

Appellant, Complete Auto Transit, Inc., appeals from a final judgment of the Supreme Court of Illinois which reversed a judgment of the Circuit Court of Sangamon County, Illinois, setting aside an Order of Appellee, Secretary of State of the State of Illinois, and submits this

statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that substantial questions are presented.

OPINIONS BELOW.

The Opinion of the Supreme Court of Illinois is reported at 169 N. E. 2d 78. The Order denying the Petition for Rehearing is not reported. The Opinion of the Circuit Court of Sangamon County, Illinois and the final Order of the Secretary of State which is set aside are not reported.

Copies of said opinions and orders and of said final judgment appealed from are set forth in Appendix A.

JURISDICTION.

This appeal involves proceedings pursuant to Illinois Revised Statutes 1957, Chapter 95½, for review of an order made by Appellee imposing upon Appellant certain motor vehicle taxes. The [redacted] and final judgment of the Supreme Court of Illinois was entered on May 18, 1960 (Appendix A). Appellant's timely application for rehearing was denied on September 26, 1960. Notice of Appeal to this Court was filed in the Supreme Court of Illinois on December 22, 1960.

The jurisdiction of this Court to review this decision by direct appeal is conferred by 28 U. S. C., Section 1257 (2).

The judgment of the Supreme Court of Illinois appealed from constitutes a final judgment of the highest court of Illinois sustaining, against claims timely asserted of repugnancy to the Constitution of the United States, the validity of the state tax statute, namely, said Illinois

Motor Vehicle Law, specifically as applied by Appellee to impose taxes upon Appellant. The following decisions are particularly relied on as sustaining this Court's jurisdiction of this appeal:

Bode v. Barrett, 344 U. S. 583, 73 S. Ct. 468;
Smith v. Cahoon, 283 U. S. 553, 51 S. Ct. 582;
Duncan v. State, 152 U. S. 377, 14 S. Ct. 570;
Louisville Gas & Electric Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423;
Southern Railway Company v. Greene, 216 U. S. 400, 30 S. Ct. 287;
G. C. & St. Fe Ry. v. Ellis, 165 U. S. 150, 17 S. Ct. 255;
Hayes v. State of Missouri, 120 U. S. 68, 7 S. Ct. 350;
Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357;
LaPorte et al. v. Bitker, 55 F. Supp. 882.

STATUTE INVOLVED.

The Illinois statute involved herein is the Illinois Motor Vehicle Law, Illinois Revised Statutes, 1957, Chapter 95½, the pertinent text of which is set out verbatim in Appendix B. Ch. III of the law deals with registration fees of vehicles. Sec. 3-402-B entitled "Reciprocity" provides that "non-resident owners", "owning any foreign registered vehicle" . . . may operate . . . such vehicle within the State without . . . paying any fees . . . subject to the condition that such vehicle at all times . . . is operated pursuant to a reciprocity agreement . . . and . . . is duly registered in . . . the place of residence of such owner . . ."

The purpose of these provisions, administered and applied by Appellee was to secure to Illinois registered vehicles "exemptions, benefits and privileges of a similar kind or to a similar degree as extended to vehicles from such jurisdictions in this State." Sec. 3-402 B-3 (b).

To carry out the purpose the Secretary of State was empowered to negotiate and execute written reciprocal agreements with other states "granting to owners . . . of vehicles duly registered . . . in such other jurisdictions . . . . benefits, privileges and exemptions from payment . . . of any taxes . . . imposed with respect to the ownership and operation of such vehicles by the laws of the State . . ." Sec. 3-402 B-3 (a).

To further carry out the purpose of the law, and in the absence of an agreement, the law at Sec. 3-402 B (1) permits that "a nonresident owner . . . may operate or permit the operation of such vehicle within this state without registering such vehicle in . . . this State . . ." if "such vehicle . . . is duly registered in . . . the place of residence of such owner . . . provided like privileges are afforded to residents of this State by the State of residence of such owner."

The Missouri Statutes involved herein is the Missouri Motor Vehicle Law R. S. Mo. 1949, Chapter 301, the pertinent text is set out verbatim in Appendix C. Section 301.270 provides reciprocity for nonresident owners as follows: "A nonresident owner . . . owning any motor vehicle which has been duly registered for the current year in the state . . . of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such owner in the place of residence of such owner may operate . . . such vehicle within this state without registering such vehicle . . . only to the extent that under the laws of the state . . . of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

QUESTIONS PRESENTED.

Appellant, Complete Auto Transit, Inc. (hereinafter called Complete) owns and operates a business at St. Louis, Missouri. In connection with such business Complete maintains and operates in St. Louis a fleet of Missouri titled motor vehicles on which it has paid applicable Missouri motor vehicle taxes. Appellee purporting to find that Complete was not a resident of Missouri imposed on its Missouri registered motor vehicles, operated in Illinois, the Illinois motor vehicle tax although other Missouri registered vehicles, operated under like circumstances, are exempt. The payment of such Illinois motor vehicle taxes, under Appellee's ruling does not constitute Complete an Illinois resident nor entitle it to the same benefits and privileges enjoyed for such payment by Illinois residents.

The questions presented are, whether Illinois Motor Vehicle Law, Ill. Rev. Stat. 1957, Ch. 95½, as construed and applied to Appellant by the Supreme Court of Illinois in its decision cited supra is:

I—Unconstitutional and void, as depriving Appellant of its property without due process of law in contravention of the 14th Amendment, United States Constitution, because it arbitrarily and unreasonably discriminates against Appellant, a foreign corporation, by denying it Motor Vehicle Registration Reciprocity and requiring it to register its vehicles and pay to Illinois a vehicle registration tax when all such vehicles are operating exclusively into or through Illinois in interstate commerce, and under like circumstances other foreign corporations similarly situated are exempt from such tax.

II—Unconstitutional and void, as depriving Appellant of the equal protection of the laws in contravention of the 14th Amendment, United States Constitution, by discrim-

inating against Appellant and denying it the same privileges of motor vehicle registration enjoyed by other similar foreign corporations and residents of the State of Illinois and thus requiring Appellant to pay to Illinois a motor vehicle fax, but prohibiting to it the exemptions from taxation in other states enjoyed in said states by such other foreign corporations and residents of Illinois.

III—Unconstitutional and void, as depriving Appellant of the equal protection of the laws, in contravention of the 14th Amendment, United States Constitution, by arbitrarily and unreasonably placing Appellant in a class separate and different than other similarly situated foreign corporations engaged solely in interstate commerce and thereby requiring it to pay a motor vehicle tax not imposed on such other similarly situated foreign corporations.

IV—Unconstitutional and void, as depriving Appellant of due process of law, in contravention of the 14th Amendment, United States Constitution, by arbitrarily and unreasonably imposing a motor vehicle tax upon Appellant's vehicles operated exclusively in interstate commerce in Illinois, when under the construction adopted by the Court, the vehicles of other foreign corporations similarly situated, operated exclusively in interstate commerce in Illinois are not subject to such tax.

STATEMENT.

Proceedings Below.

In 1958 and 1959 Appellee denied applications filed by Appellant's St. Louis, Missouri office for exemption of its Missouri licensed vehicles from the tax imposed by the Illinois Motor Vehicle Law (R. 145). Appellant paid the fees for both years under protest and requested a hearing

before Appellee under the provisions of Ill. Rev. Stat. 1957, Ch. 95½, Sec. 3-402.

Hearing was held on both applications on "the same questions" on March 3, 1959 (R. 33). Appellee entered a final order on April 3, 1959, affirming its denial of both applications and thereby subjecting Appellant to the tax imposed by the Illinois Motor Vehicle Law.

Thereupon Complete filed its complaint with the Circuit Court for Sangamon County, Illinois, contending, inter alia, that the statute in its specific application by Appellee herein violated the due process and equal protection clauses of the 14th Amendment of the Federal Constitution (R. 201, p. 8): The Circuit Court reversed the final order of Appellee without passing upon the coinstitutional issues (R. 187-189).

Appellee thereupon appealed to the Supreme Court of Illinois which reversed the decision of the Circuit Court, 169 N. E. 2d 78. Thereafter Appellant's petition for rehearing raising the above constitutional issues in the light of the opinion of the Supreme Court of Illinois (R. 208), was denied. On January 12, 1961, the Supreme Court of Illinois issued its certificate that in rendering its judgment it was "necessarily confronted with said constitutional issues and said judgment necessarily passed on those issues . . ." (R. 219) (Appendix D). The jurisdictional requirements for purpose of appeal under 28 U. S. C., Section 1257 (2) are met under the principle of care such as Central Greyhound Line, Inc. v. Mealey, 334 U. S. 653, 655, and Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282, 288-290.

FACTUAL BACKGROUND.

Appellant, Complete Auto Transit, Inc., a Michigan corporation, as a foreign corporation is authorized to do and does business in the State of Missouri. It has conducted business in Missouri since 1938 delivering automobiles from the General Motors Assembly Plant at St. Louis to points in other states under authority granted by that State (R. 118).

In the conduct of its Missouri business Complete utilizes a 15 acre storage facility which it owns and another 15 acre terminal facility which it leases (R. 119). Local and state property taxes are paid in Missouri on this property (R. 122).

Complete operates approximately 500 motor vehicles garaged and maintained at St. Louis which make deliveries of Chevrolets in various states returning to St. Louis (R. 119). The State of Missouri issues titles for these motor vehicles in Complete's name at its St. Louis address (R. 121). Complete's required to pay the same registration tax and affix the same license plates to such vehicles as all other residents of Missouri (R. 145). The vehicles are lettered in Complete's name with its St. Louis address (R. 144) and it pays city license taxes and motor fuel taxes (R. 139).

Complete's Missouri business is conducted as an autonomous self-contained unit (R. 118). Its St. Louis office keeps its own records, makes up its own payrolls, employs and discharges its own personnel, conducts its own labor negotiations, keeps its own bank account in a St. Louis bank, and dispatches the motor vehicles operated out of said terminal (R. 118-121).

The Missouri office uses its own stationery showing only its St. Louis street address, procures its own operating

authority, motor vehicle registration and license plates, pays all Missouri taxes in Missouri, the same as Missouri residents (R. 117-120). As to the privilege of conducting its business in Missouri, Complete, like other corporations in Missouri, pays the state corporate franchise tax (R. 139) and is recognized by the State of Illinois as having "a principal office" in Missouri (R. 101).

Appellant was precluded by the Hearing Officer from showing that in all respects the aforesaid relative size and activities of its St. Louis office caused it to be treated legally as a resident of Missouri by the State of Missouri (R. 140-142).

Appellant does no intrastate business in, and maintains no agents, offices or terminals in Illinois; it operates as a contract carrier on highways located in Illinois exclusively in interstate commerce.

Appellant, of course, has offices in Michigan, however, these are factually smaller than its St. Louis operation and have far fewer vehicles assigned. Appellant's Michigan office utilizes only 40 some vehicles (R. 63), whereas the St. Louis office utilized 431 tractors and 437 trailers (R. 167).

Appellant, in addition, has offices in Ohio and Georgia serving General Motors assembly plants there in the same manner as at St. Louis (R. 111). With the exception of deliveries in Missouri, Michigan, Ohio and Georgia from offices in those states, Complete's movements are exclusively in interstate commerce.

Commencing with the inception of its business in Missouri, Complete's Missouri registered motor vehicles were treated by Illinois in the same class as the Missouri licensed vehicles of other persons (R. 145). A reciprocity agreement executed in 1943 between Missouri and Illinois

confirmed and continued this classification (R. 124). Appellee's final orders denying the 1958 and 1959 applications for reciprocity registration of Missouri licensed equipment reversed this treatment and set Complete in a separate class without any factual change in its above described corporate operations.

THE FEDERAL CONSTITUTIONAL QUESTIONS ARE SUBSTANTIAL.

Under well established constitutional principles a state legislating on a subject must in practice apply such legislation equally and without discrimination to all those thereby affected. As applied by Appellee against Complete the Illinois statute in question denies Complete equal treatment with other foreign corporations and discriminates against it with respect to Illinois residents including both Illinois and foreign corporations.

I.

As applied by Appellee the statute requires Complete to pay the Illinois Motor Vehicle Tax on all its Missouri registered vehicles operated exclusively in Illinois in interstate commerce. Such vehicles, in the first instance, are registered in, and the applicable Missouri Motor Vehicle Tax paid, because Complete's Missouri operations are in all respects factually the same as any other Missouri resident.

Complete's operations since the inception at St. Louis in 1938 have been as an autonomous unit (R. 118). In conducting its Missouri business it owns and leases large tracts of real estate and substantial amounts of personal property. It is qualified to do business in Missouri and pays the corporate franchise tax for such privilege. It

holds intrastate operating authority to deliver property in Missouri (R. 155).

It pays local and state property taxes on its Missouri property city license taxes and motor fuel taxes.

Complete, though a foreign corporation, is, in fact and law, a person, or resident, in Missouri and entitled to the same rights, privileges and treatment in Illinois, as other corporations or persons carrying on the same operations in Missouri, **Southern R. Co. v. Greene**, 216 U. S. 400, 30 S. Ct. 287.

There is no factual basis on which Complete's Missouri operations can be distinguished from those of any other Missouri resident. Yet under the action of Appellee a Missouri corporation with the same or less business in Missouri would not be subjected to the Illinois tax, nor would a foreign corporation with only one other place of business, to wit: Missouri operating the same or fewer Missouri registered vehicles be so subjected. Appellant, however, operating Missouri registered vehicles in exactly the same manner as such other persons is subjected to said tax by Appellee.

In sustaining Appellee's action the decision of the Illinois Supreme Court placed Complete in a special class, without the same benefits and privileges as residents of Missouri, or other foreign corporations in Missouri, operating in exactly the same manner. The decision requires Complete, who having once paid the tax to Missouri, which state treats it as a resident, to again pay the tax to Illinois, although Appellant's business in Illinois is exclusively interstate. This decision denies Complete the benefits and privileges extended by Illinois to other corporations doing business in Missouri in the same manner.

Such a distinction between Complete and other corporations denies it equal protection of the laws. ". . . the

equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, ...", **Louisville Gas & Electric Co. v Coleman**, 277 U. S. 32, 37, 48 S. Ct. 423, 425. Such a distinction also denies "complete due process of law. . . . . due process of law and the equal protection of laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government . . .", **Duncan v. State**, 152 U. S. 377, 379, 14 S. Ct. 570; **Barbier v. Connolly**, 113 U. S. 27, 5 S. Ct. 357.

While this court has permitted reasonable classification of motor carriers for tax purposes based on highway use it has struck down distinctions not based on such use. In **Quaker City Cab Co. v. Commonwealth of Pennsylvania**, 277 U. S. 389, 48 S. Ct. 553, a tax was imposed if the carrier was a corporation, but not if it were an individual or partnership. In striking down the tax as construed and applied by the state court, this court wrote, 48 S. Ct., supra, p. 555:

> ". . . incorporated operators are taxed, while . . . natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. It follows that the section fails to meet the requirement that a classification, to be consistent with the equal protection clause, must be based on a real and substantial difference having reasonable relation to the subject of the legislation."

Here the imposition of the tax is completely unrelated to highway use. It would be imposed, as applied by Ap-

pellee, whether Complete had one motor vehicle registered in Missouri or one thousand. At the same time other corporations or persons operating Missouri licensed equipment in the same manner in interstate commerce in Illinois would be exempt whether they had one vehicle or one thousand. Such a distinction based solely on the character of the owner of the vehicles is wholly arbitrary. "But the constitutional guaranty of equal protection of the laws is interposed against discriminations that are entirely arbitrary", **Smith v. Cahoon**, 283 U. S. 553, 556, 51 S. Ct. 582, 587; **Duncan v. Missouri**, 152 U. S. 377, 14 S. Ct. 570; **Barbier v. Connolly**, 113 U. S. 27, 5 S. Ct. 357; **LaPorte et al. v. Bitker**, 55 F. Supp. 882. In the Smith case a statute drawing a distinction between carriers solely on the character of the operator unrelated to any differences in operations was held to violate equal protection of the law.

A similar rule has been long applied to rail carriers. Gulf, C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150, 17 S. Ct. 255. In Southern Railway Company v. Greene, 216 U. S. 400, 30 S. Ct. 287, a state statute imposing a tax on a railroad's doing business in a state, if they were foreign corporations, but exempting them therefrom on the same business, if domestic corporations were struck down because, "The fact is that both corporations do the same business in character and kind . . . to tax (the one) . . . by a different . . . rule than (the other) . . . for the same privilege is a denial of the equal protection of the laws . . . ", Southern R. Co., supra, 30 S. Ct. 291.

If it be suggested that Complete's operations in Michigan justify the arbitrary discrimination made against its Missouri operations, the short answer to this is that the operation of Complete's Michigan registered vehicles is entirely unrelated to the operation of its Missouri vehicles and Appellee treats such Michigan operations sepa-

rately in any event. Appellee, on the other hand, can point to no factors justifying different treatment of Complete's Missouri licensed vehicles than that accorded other foreign corporations, either Missouri or otherwise, doing business in the same manner in Missouri.

It is clear that mere classification is not enough. It must be founded on some reasonable basis. No distinction in fact exists between the Missouri registered vehicles operated by Complete in interstate commerce in Illinois, upon which Appellee pays the tax, and other such Missouri registered vehicles operated by others in interstate commerce in Illinois, which Appellee exempts. Equal protection, however, Hayes v. Missouri, 120 U. S. 68, 71, 7 S. Ct. 350 is bottomed on the ground that it

> ". . . requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed."

This is the rule today, Hartford Steam Boiler Insp. & Ins. Co. v. Harrison, 301 U. S. 459, 57 S. Ct. 838; Skinner v. Oklahoma, 316 U. S. 535, 62 S. Ct. 1110; Morey v. Doud, 354 U. S. 457, 77 S. Ct. 1344. The required equal treatment is denied Complete, however, by Appellee.

As applied by Appellee the statute requires Complete to pay the tax in Illinois (on equipment on which a tax is already paid in Missouri) without extending to Complete the right accorded a resident corporation of the State of Illinois of operating said vehicles on reciprocal exemptions in sister states. Under the existing agreement between Illinois and Missouri a resident Illinois corporation paying the tax in Illinois can operate such vehicles in Missouri in interstate commerce without payment of the tax to Missouri. Appellant, however, must pay both states and is thereby denied equal treatment

with resident Illinois corporations not only with respect to Missouri, but with respect to all other states which extend reciprocal privileges to Illinois. Obviously this favors Illinois residents at the expense of foreign corporations, such as Appellant, engaged exclusively in interstate commerce.

The magnitude of this discrimination may be judged from the fact that Illinois had in effect reciprocity agreements exempting Illinois registered vehicles in 40 states, including the states of Arkansas, Iowa, Kansas, Nebraska, Oklahoma, and Texas in which Complete operates its Missouri (and by Appellee's action) Illinois registered vehicles (Appendix E). These states which have contracted with Illinois have reciprocity laws substantially the same as that of Missouri and Illinois. Illinois has thus subjected Complete to a tax for which it receives none of the benefits accorded Illinois residents or domesticated corporations for payment of exactly the same tax.

The right of Illinois to secure the benefit of an exemption from taxation in 40 other states of vehicles registered and taxed in Illinois is undoubted. The decision here challenged, however, permits Appellee to impose the same tax on Complete, but denies it the benefits. Complete, under the decision, although operating motor vehicles in Illinois is neither incorporated in that state nor does it have an office therein. Thus although operating motor vehicles in the same manner and paying the same tax therefor, it is denied the exemption on such vehicles applicable thereto on similar vehicles operated in the 40 other states by domestic or domesticated corporations.

The purpose of the exemption granted "non resident owners" . . . "owning any foreign registered vehicle . . ." as therein set forth, Sec. 3-402 B is to secure to Illinois registered vehicles "exemptions . . . of a similar kind . . .

as extended to vehicles from such jurisdictions . . .", Sec. 3-402 B-3 (b).

Exclusion of Complete's vehicles, if registered in Illinois, from the exemptions generally accorded such vehicles in other states in no wise effectuates the purpose of securing exemptions for Illinois registered vehicles. In fact, it is directly contrary to such purpose.

Compare two foreign corporations organized in a sister state operating the same number of vehicles in interstate commerce in Illinois and other states. The one has an office in Illinois and nowhere else. The other has offices in various states, its Illinois office is the same size as that of the first corporation, but smaller than its offices in other states, say Michigan and Missouri. As applied by Appellee it pays the Illinois tax on its vehicles, but not being an Illinois corporation or having its "principal office" in Illinois, it receives none of the vehicle registration exemptions extended such other corporations. Each pays the same tax per vehicle for vehicles operated in interstate commerce in Illinois, but the former receives vehicle privileges of exemption in 40 other states on its Illinois vehicles while the latter does not.

Therefore, "The Act in its practical operation does not require like fees for equal privileges held by foreign corporations in (Illinois) under the same circumstances. . . . Such classification is not based on anything having relation to the purpose for which it is made . . .," Air-Way Electric Appliance Corporation v. Day, 266 U. S. 71, 84, 85, 45 S. Ct. 12, 15.

The fact that Complete has also paid a tax on the same vehicles to Missouri, or has multiple places of business unrelated to its Missouri operations and vehicles, does not support this result. Equal protection requires that it receive like treatment not only "in the liabilities imposed,"

but also "in the privileges conferred," Hayes v. Missouri, supra, p. 71. As applied, the Act favors Illinois domestic corporations and domesticated foreign corporations at the expense of foreign corporations engaged exclusively in interstate commerce.

Appellant does an interstate business in every state in the United States and in several has a principal office at which its motor vehicles are stationed and from which they originate. There are numerous motor carriers such as Appellant which also operate from several states and into and through all other states exclusively in interstate commerce. Therefore, a decision in this appeal will likewise effect those motor carriers.

The effect of the decision of the Illinois Supreme Court will require Appellant to pay the motor vehicle tax in each state in which it operates even though the operation is exclusively interstate. A full flow of commerce among states will no longer prevail and the payment of the tax to every state will result in an economic barrier to Appellant and its trade and increase the transportation cost to the automobile manufacturers, and, of course, result in higher cost to the ultimate consumer. The effect may readily be recognized when a tax of $300.00 to $500.00 is assessed upon Appellant by each state for each of its 2,500 motor vehicles.

Appellant therefore asserts that the federal questions presented by this appeal are substantial and that they are of public importance.

CONCLUSION.

Verily the plight of Appellant in Illinois is that of a man without a country. Determined not to be a resident of Missouri, its Missouri vehicles are subjected to a tax not

imposed on Missouri vehicles operated in Illinois in the same manner by other foreign corporations doing business in Missouri. On the other hand, payment of the tax on such vehicle to Illinois does not domesticate it in that state so as to entitle it to the substantial privileges from taxation received in exchange for such payment by domestic or domesticated Illinois corporations. A matter of first impression is presented calling for exercise of the Court's jurisdiction.

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APPENDIX A.

On May 18, 1960, the following judgment was entered by the Supreme Court of Illinois in the above cause:

This appeal is from a judgment of the circuit court of Sangamon County which reversed an administrative order of the defendant, Secretary of State, and directed him to enter an order granting plaintiff's application for reciprocity plates for its Missouri registered vehicles. The case relates to revenue.

The plaintiff is a Michigan corporation engaged in the business of transporting new automobiles from the factory to the dealer. It has an exclusive contract with the General Motors Corporation and maintains six terminals near the various assembly plants of that corporation. Two of the terminals are in Michigan, two in Georgia, one in Ohio, and one in Missouri.

In July of 1958 the plaintiff applied for the issuance of Illinois reciprocity plates for some 431 of its Missouri registered truck-tractors, under the provisions of section 3-402 (B) (1) of the Illinois Motor Vehicle Law. [Ill. Rev. Stat. 1957, chap. 95½, par. 3-402 (B) (1).] This section provides:

"A nonresident owner, except as otherwise provided in this section, owning any foreign registered vehicle of a type otherwise subject to registration hereunder, may operate or permit the operation of such vehicle within this State without registering such vehicle in, or paying any fees to, this State subject to the condition that such vehicle at all times when operated in this State is operated pursuant to a reciprocity agreement or declaration by this State, and further subject to the condition that such vehicle at all times when operated in this State is duly registered

in, and displays upon it, a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner, and displays any reciprocity permit or plate which may be required by the Secretary of State, and provided like privileges are afforded to residents of this State by the State of residence of such owner."

The application was denied and plaintiff sought a hearing under the provisions of section 2-117 of the Illinois Motor Vehicle Law. (Ill. Rev. Stat. 1957, chap. 95½, par. 2-117.) The denial of a similar application made in 1959 was also reviewed at the administrative hearing. The defendant affirmed the denial of both applications on the ground that the Missouri registered vehicles were not registered in the State of the "owner's residence" and for the further reason that there was no reciprocity agreement between the States of Illinois and Missouri. Plaintiff thereupon filed its complaint for judicial review in the circuit court of Sangamon County. The court found that plaintiff had a residence in the State of Missouri during the years in question and that there was a reciprocity agreement in force between the States of Illinois and Missouri during that period.

The principal question is whether plaintiff is a resident of Missouri within the meaning of section 3-402 (B) (1). Four jurisdictions with statutory provisions similar to section 3-402 (B) (1) have held that the place of residence of a corporate owner of a motor vehicle is where the corporation is incorporated. (State v. Garford Trucking, Inc., 4 N. J. 346; Western Express Co. v. Wallace, 144 Ohio St. 42; Hilburn v. Herrin Transportation Co. [Tex. Civ. App.], 197 S. W. 2d 149; Transport Rentals, Inc., v. Carpenter, 325 S. W. 2d 745.) The Appellate Court of Missouri has also held that the place of residence of a corporate owner of a motor vehicle may be where the principal place of

business is located although it is incorporated in another State. (State v. Tustin, 322 S. W. 2d 179.) These and many more cases dealing with various definitions of residence of a corporation have been cited by plaintiff and defendant.

The legislature has, however, in section 1-101 of the Illinois Motor Vehicle Law (Ill. Rev. Stat. 1957, chap. 95½, par. 1-101), provided that "The following words and phrases when used in this Act shall, for the purpose of this Act, have the meanings respectively ascribed to them in this chapter, except when the context otherwise requires." A resident corporation is defined in section 1-155 (chap. 95½, par. 1-155) as being a corporation incorporated under the laws of the State of Illinois or having its principal place of business in this State. The plaintiff correctly asserts that this definition of which corporations are residents of Illinois does not specifically define a nonresident corporation's place of residence. We are of the opinion nevertheless that this section reveals the legislature's conception of corporate residence as that term is used in the Illinois Motor Vehicle Law.

The plaintiff next contends and the trial court found that a corporation can have more than one principal place of business and that plaintiff has a principal place of business in Missouri. We are of the opinion that the legislature intended to define but one business location by stating "the principal place of business."

The question of where a corporation's principal place of business is located is necessarily one of fact. The defendant found in the administrative hearing that plaintiff's principal place of business is located in Michigan and this finding is not disputed. Thus, since the plaintiff is not incorporated under the laws of the State of Missouri and does not have its principal place of business in that

State, it is not a resident of the State of Missouri within the meaning of section 3-402 (B) (1).

It is then argued by the plaintiff that it is entitled to reciprocity plates for its Missouri registered vehicles under a reciprocity agreement between the States of Missouri and Illinois dated November 21, 1943. The agreement provides that any corporation which has its principal place of business in either Illinois or Missouri shall in addition to such persons as fall within the common and legal definition of the word "resident" be deemed a resident of the State in which such principal place of business was so situated. This agreement does not authorize the defendant to grant reciprocity to the plaintiff on its Missouri registered vehicles because the plaintiff's principal place of business, as determined in the administrative hearing, is not located in Missouri.

The judgment of the circuit court of Sangamon County is reversed.

APPENDIX B.

Pertinent parts of the Illinois Motor Vehicle Law, Illinois Revised Statutes, 1957, Chapter 95½, Sec. 3-402, are as follows:

"A. Every motor vehicle, trailer, semi-trailer and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter except:"

"B. Reciprocity. Any motor vehicle, trailer, semi-trailer or pole trailer need not be registered under this Act provided the same is operated in accordance with the following provisions and any rules and regulations promulgated pursuant thereto:

(1) A nonresident owner, except as otherwise provided in this section, owning any foreign registered vehicle of a type otherwise subject to registration hereunder, may operate or permit the operation of such vehicle within this State without registering such vehicle in, or paying any fees to, this State subject to the condition that such vehicle at all times when operated in this State is operated pursuant to a reciprocity agreement or declaration by this State, and further subject to the condition that such vehicle at all times when operated in this State is duly registered in, and displays upon it, a valid registration card and registration plate or plates issued for such vehicle in the place of residence of such owner, and displays any reciprocity permit or plate which may be required by the Secretary of State, and provided like privileges are afforded to residents of this State by the State of residence of such owner."

B. "(3) (a) In order to effectuate the purposes of this Act, the Secretary of State of Illinois is empowered to

negotiate and execute written reciprocal agreements or arrangements with the duly authorized representatives of other jurisdictions, including States, districts, territories and possessions of the United States, and foreign states, provinces, or countries, granting to owners or operators of vehicles duly registered or licensed in such other jurisdictions and for which evidence of compliance is supplied, benefits, privileges and exemptions from the payment, wholly or partially, of any taxes, fees or other charges imposed with respect to the ownership or operation of such vehicles by the laws of this State except the tax imposed by the Motor Fuel Tax Law, approved March 25, 1929, as amended, and the tax imposed by the Use Tax Act, approved July 14, 1955, as amended."

B. (3) "(b) Such reciprocal agreements or arrangements shall provide that vehicles duly registered or licensed in this State when operated upon the highways of such other jurisdictions, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as extended to vehicles from such jurisdictions in this State."

APPENDIX C.

Pertinent parts of the Missouri Motor Vehicle Law, R. S. Mo. 1949, Chapter 301, are as follows:

"A nonresident owner, except as otherwise herein provided, owning any motor vehicle which has been duly registered for the current year in the state, country or other place of which the owner is a resident and which at all times when operated in the state has displayed upon it the number plate or plates issued for such vehicle in the place of residence of such owner, may operate or permit the operation of such vehicle within this state without registering such vehicle or paying any fee to this state, provided that the provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, country or other place of residence of such nonresident owner like exemptions are granted to vehicles registered under the laws of and owned by residents of this state."

APPENDIX D.

CERTIFICATE OF THE SUPREME COURT OF THE STATE OF ILLINOIS.

Upon Motion of Complete Auto Transit, Inc., a Corporation, Plaintiff-Appellee in this Court in this cause, it is hereby certified and made a part of the record of this cause and of the judgment of this Court denying Plaintiff-Appellee's Petition for Rehearing heretofore entered, that Plaintiff-Appellee, in its original Petition filed with the Defendant-Appellant under the provisions of the Administrative Review Act and again in its Complaint filed in the Circuit Court of Sangamon County, Illinois, pursuant to the provisions of the Administrative Review Act, Plaintiff-Appellee raised issues involving the Fourteenth Amendment to the Constitution of the United States; that the Circuit Court of Sangamon County, Illinois, found it unnecessary to decide said issues but held for the Plaintiff on other grounds.

It is further certified that, upon the appeal by the Defendant-Appellant, Plaintiff-Appellee had no adverse decision from which to appeal involving said constitutional issues. It is further certified that said Plaintiff-Appellee at its earliest opportunity in its Petition for Rehearing filed in this Court set up said constitutional issues as follows:

> "The Court's construction of section 1-155 and section 3-402 (B) of the Illinois Motor Vehicle Law results in creating an arbitrary and unreasonable classification of foreign motor truck corporations. The discriminative effect of such construction infringes the plaintiff's constitutional rights as being violative of Article IV, section 22 and Article II, section 14 of the Illinois Constitution and the 14th

Amendment of the U. S. Constitution in that plaintiff would not be extended the same privileges and immunities as other Illinois residents including foreign motor truck corporations with the principal place of business located in Illinois. Furthermore, this construction would deprive the plaintiff of property without due process of law in violation of the 14th Amendment to the U. S. Constitution and Article II, section 2 of the Illinois Constitution as it constitutes the levying of a tax based on arbitrary classification.

"Plaintiff raised these constitutional issues at the earliest opportunity in plaintiff's Petition filed with defendant Secretary of State under the provisions of the Administrative Review Act (Abst. 61, 62). These questions were preserved in the Lower Court by reason of the allegations in plaintiff's Complaint filed pursuant to the Administrative Review Act (Abst. 8). The Lower Court, however, did not reach them as the Court held for the plaintiff on other grounds (Abst. 81, 83), and it was not necessary, therefore, for that Court to pass on any constitutional issue.

"Article IV, section 22 of the Illinois Constitution prohibits the General Assembly from passing local or special laws granting to any **corporation**, association or individual any special or exclusive privilege, immunity or franchise whatever. The purpose of this provision is to prevent the enlargement of the rights of one or more persons and the impairment of, or discrimination against, the rights of others (Gaca v. City of Chicago, 103 N. E. 2d 617, 411 Ill. 146).

"As demonstrated under (C) in plaintiff's petition, the Court's construction of section 1155 creates an arbitrary and unreasonable classification of foreign motor truck corporations by giving the literal meaning of 'one' to the word 'the.'

"The discrimination effect of the Court's interpretation is readily apparent in plaintiff's situation.

Here, plaintiff doing an exclusively interstate business, maintaining no place of business or carrying on any business in Illinois whatsoever if required to purchase and pay the full amount for license plates will be paying the same tax as any other Illinois resident. Yet, plaintiff would not be considered or deemed to be a resident of Illinois under section 1-155 as the Court has construed and applied it to plaintiff. Thus, plaintiff travelling in sister states would not be considered an Illinois resident entitled to the reciprocal benefits and privileges extended to Illinois residents by the sister states as such benefits and privileges are only extended to residents of each state. Hence, plaintiff although paying the same amount for license taxes as any other Illinois resident would be required to pay additional amounts for license taxes in sister states whereas the foreign motor truck corporation with 'the principal place of business' in Illinois; being an Illinois resident, would not be required to pay any additional amounts for license taxes in sister states as it would be entitled to the privileges and benefits of reciprocity extended to the residents of Illinois under the reciprocity statute of the sister state.

"In People v. City of Chicago, 337 Ill. 100 at p. 105, this Court stated the rule forbidding discrimination in violation of constitutional guaranties:

'. . . A class may not be created by the arbitrary declaration of an act of the legislature and endowed with special legislative favors or subjected to special burdens. The classification, in such instances, must be based on a substantial and reasonable distinction in the situation and circumstances of the individuals who are embraced therein from those not so included, and the ground of such classification and distinction must have relation in reason and in principle to the privileges or burdens proposed to be granted to or

laid upon such individuals as a class by the proposed legislation. (**Berry v. City of Chicago**, 320 Ill. 536; **Bagdonas v. Liberty Land and Investment Co.**, 309 id. 103.) An act which arbitrarily discriminates against one class in the transaction of a lawful business or occupation and leaves unaffected others engaged in a manner not distinguishable in character from that in which the class discriminated against is employed is in contravention of constitutional guaranties. (**Bailey v. People**, 190 Ill. 28.)'

"We respectfully submit that the classification and distinction here made between members of the same class, namely, foreign motor trucking corporations, conferring on one the status of a resident based on 'the principal place of business' being located in Illinois and denying it to another foreign motor trucking corporation having a place of business in Illinois is unreasonable and arbitrary as the ground of such classification has no relation to the use made of the highways by the members of the same class. The classification also results in granting to the foreign trucking corporation with 'the principal place of business,' a privilege, as an Illinois resident, to enjoy the reciprocal benefits of travel without paying any additional amounts for license taxes in sister states while denying the privilege to another member of the same class in the same situation."

It is further certified that the judgment of this Court denying Plaintiff-Appellee's Petition for Rehearing necessarily was confronted with said constitutional issues and said judgment necessarily passed on those issues and held that Section 1-155 did not violate the Fourteenth Amendment to the Constitution of the United States.

APPENDIX E.

The following quotation is part of commentary prepared and written by Mr. Samuel Young, Special Assistant Attorney General, representing Appellee, Secretary of State of Illinois, appearing in Smith-Hurd Illinois Annotated Statutes, Ch. 95½, p. 139:

"At the present time, the state of Illinois has reciprocity agreements with forty of the forty-eight states. Illinois does not at the present time have reciprocity with the states of Utah, Colorado, Oregon, New Mexico, Idaho, Arizona, Nevada, or Wyoming."